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### **Bill Will Restore Congress' Powers in Era After Bush**

By Rep. Brad Miller and Emily Berman

The recent revelation that former Vice President Dick Cheney unilaterally decided to keep Congress in the dark about a CIA program targeting al-Qaida members for assassination comes as no surprise.

The last administration's aggressive expansion of executive power is well-known. From surveillance practices to energy policy and from politicized criminal prosecutions to information about climate change, the Bush administration used its control over information to stifle dissent, to skew debate and to insulate itself from accountability. It asserted the right to ignore duly enacted statutes. And it kept secret from Congress and the American people many of its policies and the legal justification for those policies.

This is not news to any Member of Congress who tried over the past eight years to extract necessary information from the executive branch, who attempted to discover the legal justifications for executive branch programs, or who watched the president sign a bill into law while issuing a "signing statement" claiming the power to disregard all or part of that new law.

The constitutional system of checks and balances — designed by our nation's founders to prevent the concentration of power in any one branch of government — has become dangerously distorted. This recent expansion of executive power is an enduring threat to our very system of democratic government.

A bill that will be introduced this week, the Checks and Balances Restoration and Revitalization Act, goes a long way toward reversing the damage inflicted on the constitutional balance of powers. The bill recognizes that Congress has struggled in recent years to resist effectively aggressive assertions of executive power. The result has been an infringement on Congress' ability to act as a coequal branch of government.

The bill provides Congress with new tools to combat certain methods frequently used by the executive to thwart or undermine Congressional authority. These new tools provide Congress with effective means of challenging improper claims of executive privilege, ensuring compliance with Congressional subpoenas, checking the use of presidential signing statements to disregard duly enacted laws and overcoming the Justice Department's refusal to disclose legal opinions that give impunity to executive branch officials for conduct that violates the law.

First, the bill ensures that Congress will have access to the information it needs to perform its constitutional duties. The bill confirms the power of Congress to challenge a claim of executive privilege in court when the executive refuses to provide information. When negotiations fail, Congress will have a way to resolve the dispute and obtain any withheld information to which it is entitled.

The bill also creates new mechanisms to enforce Congressional subpoenas. Rather than depend on the executive branch to prosecute its own officials for contempt of Congress, Congress could require a special counsel to prosecute such charges. And the bill provides that the House of Representatives can go to court to collect any fines that it imposes on a contumacious witness under its inherent power to punish contempt.

When the president issues a "signing statement" that he may disregard or decline to enforce a duly enacted law, the bill allows Congress to bring a lawsuit to compel the president to enforce the law.

And the bill expands requirements that the Justice Department report to Congress when the department concludes that a law is unconstitutional or otherwise not binding on the president.

To date, the current administration has not made such extravagant claims of executive authority. But it is the nature of presidents to seek expansive powers. The framers of the

Constitution provided each branch "necessary constitutional means and personal motives to resist encroachments of the others," James Madison said, so that "each may be a check on the other" and thus "a sentinel over the public rights." Congress must be vigilant to protect Congress' constitutional powers regardless of who is president or which party is the majority in Congress.

The Checks and Balances Restoration and Revitalization Act gives Congress more effective and flexible means to resist the encroachment of future presidents, so that Congress can protect its constitutional turf and thus protect the republic from a dangerous concentration of power. Congress should pass the bill, and President Barack Obama should put temptation behind him and sign the act into law.

*Rep. Brad Miller (D-N.C.) is the principal sponsor of the Checks and Balances Restoration and Revitalization Act. Emily Berman is an attorney at the Brennan Center for Justice and the author of "Executive Privilege: A Legislative Remedy."*